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Expansion of Powers Legal?

Spy Move Challenged

WASHINGTON — Six months after the Reagan administration greatly expanded the domestic intelligence-gathering powers of the Central Intelligence Agency, FBI and other agencies, a coalition of critics has mounted a challenge in U.S. District Court here.

In a suit filed June 30 on behalf of 36 religious, educational, journalistic and political groups and individuals, attorneys from the Center for Constitutional Rights have charged that the plan, embodied in Executive Order 12333, violates the First, Fourth and Fifth Amendments and the 1947 National Security Act.

The order for the first time specifically authorizes the CIA and other intelligence agencies to gather, within the United States, "foreign intelligence" and "counterintelligence" and to conduct covert activities here as well.

The order, which went into effect when President Reagan signed it on Dec. 4, 1981, authorizes the agencies to "use such techniques as electronic surveillance, unconsented physical search, mail surveillance, physical surveillance, or monitoring devices" without a warrant and subject only to guidelines to be established by the attorney general and the directors of the intelligence agencies.

Those powers may only be used in "intelligence gathering," and not for "law enforcement" purposes, the order states.

Supreme Court Ruling

Under the Reagan order, "you have less rights if you're not suspected of a crime than a person who is suspected of a crime," said Center for Constitutional Rights attorney William Schapp, one of four CCR attorneys involved in the case. *United Presbyterian Church v. Reagan*, 82-1824.

The Supreme Court in 1972 rejected the Nixon administration's contention that information obtained by warrantless "national security" wiretaps and surveillance could be used in criminal investigations. *U.S. v. U.S. District Court*, 407 U.S. 297. But in that case, and in subsequent decisions, the court avoided the question of whether warrantless searches could be used in

non-law enforcement foreign intelligence operations.

The Reagan order specifically assumes that such surveillance is allowable under the Fourth Amendment and gives the attorney general "the power to approve the use for intelligence purposes within the United States or against a United States person abroad of any technique for which a warrant would be required if undertaken for law enforcement purposes" as long as he determines "in each case" that the surveillance is "directed against a foreign power or the agent of a foreign power."

That grant of authority to the attorney general does not include power to approve electronic surveillance covered by the Foreign Intelligence Surveillance Act. (NLJ, 8-12-81.)

Fourth Amendment Violation?

The plaintiffs object that the stipulation that the attorney general determine only that surveillance is "directed" against foreign powers or their agents does not prevent the government from watching citizens who are themselves not agents but who may come in contact with foreigners. Such surveillance would violate the Fourth Amendment, the plaintiffs claim.

The order allows the CIA to conduct covert actions within the United States, in coordination with the FBI, by changing the position of the word "abroad" in the definition of "special activities." Under a Carter administration order revoked by the Reagan order, special activities were to be "conducted abroad in support of national foreign policy objectives." Under the Reagan order, those activities will be "conducted in support of national foreign policy objectives abroad," a fine distinction that seems to allow domestic activity by the CIA in support of its foreign operations.

The plaintiffs claim that the grant of authority to the CIA violates the National Security Act of 1947, which established the agency and barred it from any "internal security" functions. The plaintiffs also object that the definitions in the order are overbroad, making the order too vague to survive under the Fifth Amendment.

The religious plaintiffs, including the United Presbyterian and United Methodist Churches, claim that the order violates the First Amendment by interfering with their religious activities.

—David Lauter